

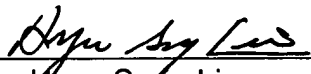
CONFIRMATION COPY**DECLARATION UNDER 37 C.F.R. 1.132**

I, Dr. Hyun Sung Lim, do hereby declare as follows:


1. I was granted a Bachelor of Science in Chemical Engineering from the University of Illinois-Champaign in 1975, and a Doctor of Philosophy in Chemical Engineering from the Georgia Institute of Technology in 1982.
2. I have worked for the assignee of this patent application no. 09/691,273, E.I. du Pont de Nemours and Company since 1982 and am an expert in Flash Spinning Technology.
3. I am a coinventor of the cited references, U.S. Patent nos. 5,290,628 (the '628 Patent) and 6,034,008 (the '008 Patent), both to Lim et al., and an expert in the art of flash spinning of polyolefin fibers. I have been informed of the Examiner's rejection of claims 28-30 in the present application over my patent nos. 5,290,628 and 6,034,008, and have read and considered the Examiner's position in each instance.
4. As to the Examiner's finding with respect to the '628 Patent that the fabrics and process disclosed therein would form a "unitary fibrous sheet" within the meaning set forth in the present application, I disagree. Even when hydraulically needled according to the '628 Patent, the sheets so formed and processed had two distinctly different sides: a first side which remained essentially a flash spun polyethylene sheet layer, and a second side which remained essentially a staple fiber sheet layer. The staple fibers were not hydraulically needled into the flash spun sheet to the extent that the staple fiber layer entirely lost its identity, nor do I believe such would be possible.
5. As to the '008 Patent, I disagree with the Examiner's finding that it was possible at the time the invention was made to merely choose among various disclosed ranges of hydrohead and Gurley Hill porosity to obtain a fabric having the combination of properties claimed in the present application. The properties of water resistance (hydrohead) and air permeability (Gurley Hill porosity) are competing characteristics of any fabric, and it is generally known in the art that processing techniques which increase hydrohead result in a decrease in air permeability (an increase in the Gurley Hill number). The chemistry of the polymer(s) and structure of the plexifilaments in the flash spun fabrics of my '008 Patent is not necessarily determinative of their barrier and permeability properties, in contrast to the Examiner's findings to the contrary. Further, I declare

that none of the sheets disclosed in my '008 Patent had combinations of hydrohead and Gurley Hill within the presently claimed ranges.

6. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.



Hyun Sung Lim



date

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The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 27

MAILED

OCT 31 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LARRY R. MARSHALL and PENNY SIMPSON STEIN

Appeal No. 2002-1003
Application No. 08/914,409

ON BRIEF

Before KIMLIN, OWENS and TIMM, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 2-7, 9-12, 14-19 and 26, all the claims remaining in the present application. Claim 12 is illustrative:

12. A synthetic sheet material comprised primarily of flash-spun plexifilamentary nonwoven fibers, said sheet material having a hydrostatic head pressure of at least about 75 cm of water, a Gurley Hill Porosity of less than about 15 seconds, and an MVTR-LYSSY, measured according to ASTM E398-83, of at least 1300g/m²/day.

Appeal No. 2002-1003
Application No. 08/914,409

Appellants maintain at page 5 of the Reply Brief that they "believe it is incumbent upon the Board to determine whether or not examiners can rely on a *per se* rule of indefiniteness, as set forth in *Ex parte Slob*" (second paragraph). Suffice it to say that it is by now axiomatic that each case must be decided on its own underlying facts and that *per se* rules, whether applied to prior art or § 112 rejections, are, *per se*, verboten.

One final point remains. The examiner, for some reason, did not include claim 19, which defines a protective garment comprising the sheet material of claim 12, in the rejection under 35 U.S.C. § 112, second paragraph. In the event of further prosecution of the subject matter at bar, e.g., in a continuing application, the examiner should consider the rejection of claim 19 as well.

In conclusion, based on the foregoing, the examiner's rejection of claims 2-7, 9-12, 14-18 and 26 under 35 U.S.C. § 112, second paragraph, is affirmed. The 35 U.S.C. § 102(b) rejection over Dempsey is reversed. The rejection of claims 2-7, 9-12, 14-18 and 26 under 35 U.S.C. § 103 over Shin in view of Steuber and Dempsey is affirmed, as is the rejection of claim 19 under 35 U.S.C. § 103 over the combined teachings of Shin,